

that he is requesting the Court to send him “any type of forms that will help me with this insurance fraud.” (Doc. No. 1 at 8).

The Court first notes that Plaintiff’s inmate trust fund account states that as of February 26, 2014, Plaintiff’s inmate trust fund balance was \$0.00. (Doc. No. 2-1 at 1). Because the Court finds that Plaintiff does not have sufficient funds with which to pay the filing fee, the Court will grant Plaintiff’s application to proceed in forma pauperis.

II. STANDARD OF REVIEW

Because Plaintiff seeks to proceed in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “frivolous or malicious [or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

III. DISCUSSION

Section 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983. As its language indicates, Section 1983 applies only to persons acting under color of state law. It is well settled that private actors are not persons acting under color of state law and, thus, cannot be held liable under § 1983. See Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526

U.S. 40, 49-50 (1999). Plaintiff does not allege, and it does not appear, that Defendant was acting under color of state law, as Defendant appears to be a private actor.¹ In sum, the Court will sua sponte dismiss Plaintiff's Complaint for failure to state a claim. The dismissal will be without prejudice, however, to Plaintiff to pursue a state law claim for insurance fraud in state court.

IV. CONCLUSION

For the reasons stated herein, Plaintiff's action is dismissed.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's Application to Proceed in Forma Pauperis, (Doc. No. 2), is **GRANTED**;
2. Plaintiff's Complaint is **DISMISSED** without prejudice.

IT IS SO ORDERED.

Signed: March 20, 2014

A handwritten signature in black ink, appearing to read "Frank D. Whitney", is written over a horizontal line.

Frank D. Whitney
Chief United States District Judge



¹ The Court further notes that it is unclear whether Plaintiff has standing to bring this suit, as he does not allege that he is the beneficiary of the life insurance policy.